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**CHANDIRASEGARAN RAMASAMY
v. AMGENERAL INSURANCE BHD**

HIGH COURT MALAYA, KUALA LUMPUR
ATAN MUSTAFFA YUSSOF AHMAD J
[CIVIL APPEAL NO: WA-11ANCC-17-10-2023]

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31 DECEMBER 2024

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Abstract – (i) *For an indemnity-based personal accident insurance policy, the cause of action accrues upon the occurrence of the insured event, ie, the death or disablement due to accident. The limitation period for such a claim is six years from the date the cause of action accrued, as per s. 6 of the Limitation Act 1953; (ii) Section 7(3B) of the Civil Law (Amendment) Act 2019 does not apply to claims based on breach of contract, such as a claim against an insurer for failing to pay out under a policy. The entirety of s. 7 of the said Act is focused on tortious claims, and there is no indication that s. 7(3B) is intended to extend to contractual obligations.*

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INSURANCE: *Claim – Policy – Group personal accident insurance policy – Deceased died in fatal motorcycle accident – Deceased did not possess valid motorcycle riding licence at time of death – Claim by father and administrator of deceased’s estate for benefits under policy – Claim repudiated by insurer – Whether claim time-barred under s. 6 of Limitation Act 1953 – Whether there was unlawful act at time of accident – Whether s. 7(3B) of Civil Law (Amendment) Act 2019 applied – Whether insurer entitled to deny claim under policy*

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LIMITATION: *Cause of action – Accrual – Insurance policy – Deceased died in fatal motorcycle accident – Claim by father and administrator of deceased’s estate for benefits under policy – Whether indemnity insurance policy or claims-made policy – Whether insurer’s obligation to pay triggered by occurrence of insured event – When cause of action accrued – Whether claim time-barred under s. 6 of Limitation Act 1953*

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Persatuan Pengusaha Jurugaya Rambut India Malaysia (‘association’) had purchased a group personal accident insurance policy from AmGeneral Insurance Berhad (‘respondent’). The deceased, a student in a course conducted by the association, was involved in a fatal motorcycle accident. Following his death, the association submitted a personal accident claim to the respondent. The respondent rejected the claim on the ground that, at the time of the accident, the deceased did not possess a valid motorcycle riding licence and had, therefore, committed an unlawful act which was expressly excluded under the policy. The deceased’s father (‘appellant’), and the administrator of the deceased’s estate, commenced a civil action at the Magistrates’ Court, against the association and the respondent. The

association successfully applied to strike out the appellant's claim against it; the action then proceeded against the respondent alone. The respondent filed an application, pursuant to O. 33 rr. 2 and 5 of the Rules of Court 2012, for preliminary determination of 11 questions of law before trial. The application also sought consequential relief that, if the preliminary questions were decided in the respondent's favour, the appellant's claim should be dismissed. The Magistrates' Court allowed the application and dismissed the appellant's claim without proceeding to full trial. Hence, the present appeal. The issues that arose for determination were: (i) whether the appellant's claim against the respondent was time-barred under s. 6 of the Limitation Act 1953 ('LA'); (ii) whether there was an unlawful act under the insurance policy exclusion when the deceased rode his motorcycle without a valid licence; and (iii) whether s. 7(3B) of the Civil Law (Amendment) Act 2019 ('CLA') applied.

Held (dismissing appeal; affirming decision of Magistrates' Court):

- (1) The policy under consideration was an indemnity insurance policy, not a claims-made policy. The respondent's obligation to pay was triggered by the occurrence of the insured event, *ie*, the death or disablement of the insured person resulting from accidental injury. The benefit becomes payable upon the happening of this event, subject to the terms and conditions of the policy. This was further reinforced by the Table of Benefits in the policy, which listed the various events upon which the claim becomes payable. The appellant's cause of action, accrued on 7 September 2016, when the deceased met with the fatal accident. The appellant only filed the writ of summons on 29 September 2022, more than six years after the cause of action accrued. The claim was time-barred under s. 6 of the LA. (paras 35, 36 & 43)
- (2) The deceased's act of riding the motorcycle without a valid licence, at the time of the accident, constituted an 'unlawful act' within the meaning of Exclusion 1 of the policy, entitling the respondent to deny the appellant's claim. Riding a motorcycle without a valid licence is an unlawful act under the Road Transport Act 1987. There was no ambiguity in the meaning of 'in connection with' in Exclusion 1; the phrase had a clear and established broad meaning, which encompassed the situation at hand. Consequently, the respondent was entitled to deny the appellant's claim under the policy. (paras 51, 54, 58 & 60)
- (3) The appellant's claim against the respondent was based on an alleged cause of action in contract, *ie*, breach of the insurance contract by the respondent, and not in tort. The entire scheme of s. 7 of the CLA is focused on tortious claims. There is nothing in the language of s. 7(3B), or in any part of s. 7, to suggest that it was intended to apply to contractual claims. Section 7(3B) was clearly inapplicable to the appellant's claim. (paras 68, 70 & 73)

A Case(s) referred to:

AIA Berhad v. Dr Tan Siew Hui [2020] CLJU 258; [2020] 1 LNS 258 HC (*refd*)
ALW Car Workshop Sdn Bhd v. AXA Affin General Insurance Bhd [2019] 7 CLJ 667
FC (*refd*)

Mohd Sultan Dastagir Syed Ibrahim & Anor v. AXA Affin General Insurance Bhd
[2020] CLJU 565; [2020] 1 LNS 565 HC (*refd*)

B *Shiva Kumar Day v. Allianz Life Insurance Malaysia Bhd & Anor* [2021] CLJU 684;
[2021] 1 LNS 684 HC (*refd*)

Su Hock Guan v. AXA Affin General Insurance Malaysia Bhd [2020] CLJU 1584;
[2020] 1 LNS 1584 HC (*refd*)

Legislation referred to:

C Civil Law (Amendment) Act 2019, s. 7(3A), (3B)

Limitation Act 1953, s. 6

Road Transport Act 1987, s. 26(1)

Rules of Court 2012, O. 33 rr. 2, 5, O. 92 r. 4

For the appellant - M Manoharan; M/s M Manoharan & Co

D *For the respondent - WL Wong & Asha Mohan; M/s Azim, Tunku Farik & Wong*

[Editor's note: Appeal from Magistrate's Court; Civil Suit No: WA-A72NCC-24275-09-2022.]

Reported by Najib Tamby

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JUDGMENT

Atan Mustaffa Yussof Ahmad J:

F [1] Before the court is an appeal against the decision of the Magistrates' Court allowing the respondent insurance company's application under O. 33 rr. 2 and/or 5 of the Rules of Court 2012 ('ROC') for preliminary determination of questions of law and fact, which resulted in the dismissal of the appellant's claim for insurance benefits arising from the death of the insured in a motorcycle accident. The preliminary questions concerned issues of privity of contract between the appellant and the respondent insurer, whether the claim was time-barred under the Limitation Act 1953 ('Limitation Act'), and whether policy coverage was excluded due to the deceased riding without a valid license. The learned Magistrate determined these questions without proceeding to a full trial, finding that their resolution was sufficient to dispose of the entire claim.

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Background Facts

I [2] Thumilan a/l Chandirasegaran ('the deceased') was enrolled as a student in a hairdressing and hair-cutting course conducted by the first defendant at the Magistrates' Court, Persatuan Pengusaha Jurugaya Rambut India Malaysia ('the association'). The association had purchased a group personal accident insurance policy from the respondent, AmGeneral

Insurance Berhad, who was the second defendant at the Magistrates' Court, covering enrolled students. The policy, bearing e-Policy No. JGC0643914 and Policy No. W-5-16-H-006040 ('the policy'), was effective from 29 February 2016 to 28 February 2017.

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[3] On 7 September 2016, the deceased was involved in a fatal motorcycle accident along the KESAS Highway. At the time of the accident, the deceased did not possess a valid motorcycle riding licence, as confirmed by the Road Transport Department in their letter dated 11 January 2017.

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[4] Following the deceased's death, the association submitted a personal accident claim form to the respondent on 29 November 2016, approximately three months after the incident. The claim was for benefits under the policy relating to accidental death.

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[5] On 26 July 2017, the respondent issued a notice of repudiation rejecting the claim. The grounds for rejection included that the deceased did not possess a valid riding licence at the material time and therefore had committed an unlawful act which was expressly excluded under the policy.

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[6] The appellant, Chandirasegaran a/l Ramasamy, who is the deceased's father and the plaintiff in the Magistrates' Court suit, is also the administrator of the deceased's estate. He subsequently filed a civil action against both the association and the respondent on 29 September 2022 at the Magistrates' Court in Kuala Lumpur. The appellant claimed benefits under the policy, specifically for 'accidental death' and 'bereavement allowance' totalling RM80,000.

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[7] The association successfully applied to strike out the appellant's claim against them. The action then proceeded against the respondent alone.

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[8] The policy contained several relevant provisions:

- (i) a requirement that notice of any accident likely to give rise to a claim must be given within 14 days;
- (ii) an exclusion clause stating that the policy does not cover death directly or indirectly caused by or arising from the committing of any unlawful act;
- (iii) a condition precedent requiring compliance with all terms and conditions of the policy; and
- (iv) an arbitration clause requiring any disputed claim to be referred to arbitration within 12 months of disclaimer of liability.

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[9] The deceased was listed as an 'insured person' in the policy schedule under Plan 2. The policy period was from 29 February 2016 to 28 February 2017, and the policy was in force at the time of the accident.

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A [10] The respondent filed an application under O. 33 rr. 2 and 5 of the ROC for preliminary determination of several questions of law before trial. The Magistrates' Court allowed this application and dismissed the appellant's claim without proceeding to a full trial. The plaintiff subsequently filed an appeal against this decision.

B **The Order 33 Application**

C [11] The respondent's application under O. 33 r. 2 and/or r. 5 and/or O. 92 r. 4 of the ROC sought for preliminary determination of 11 questions of law and fact before trial. The questions included issues of privity of contract, limitation period, compliance with policy conditions, validity of the deceased's licence, whether an unlawful act had been committed, and the applicability of the Civil Law (Amendment) Act 2019. The application also sought consequential relief that if these preliminary questions were decided in the respondent's favour, the appellant's claim should be dismissed with costs. Alternatively, if the questions were decided in the appellant's favour, the matter should proceed to a full trial on other issues raised in the pleadings.

E [12] The grounds of the application were that: (i) the appellant's claim was based entirely on alleged breach of contract between the appellant and the respondent; (ii) the respondent's primary defence was that the deceased and/or appellant had no privity of contract under the policy; (iii) alternatively, the deceased had committed an unlawful act by riding without a valid licence, triggering the policy exclusion; (iv) the claim was time-barred under the Limitation Act; (v) the appellant had breached policy conditions including the notice requirement and arbitration clause; and F (vi) determining these preliminary issues would save significant judicial time and costs, as the remaining issues would require extensive witness evidence and documentary proof that would involve more judicial time and expense.

[13] The questions framed in the application were:

G (a) Sama ada Defendan Pertama merupakan pihak yang berkontrak dengan Defendan Kedua.

H (b) Sama ada Plaintiff atau simati mempunyai priviti kontrak dengan Defendan Kedua berdasarkan Polisi tersebut dan/atau kausa tindakan yang sah untuk membawa tindakan undang-undang terhadap Defendan Kedua.

I (c) Sekiranya Plaintiff dan/atau simati mempunyai priviti kontrak dan/atau kausa tindakan terhadap Defendan Kedua, sama ada tuntutan Plaintiff terhadap Defendan Kedua telah membatasi has masa 6 tahun dari Tarikh pengakruan kausa tindakan atau dihalang oleh Seksyen 6 Akta Had Masa 1953.

- (d) Sama ada segala manfaat-manfaat dibawah Polisi tersebut adalah tertakluk kepada pematuhan ketat terma-terma, syarat-syarat, pengecualian-pengecualian dan endorsemen-endorsemen yang terkandung di dalam Polisi tersebut. A
- (e) Sama Plaintiff dan/atau Defendan Pertama telah memungkir Condition 11b, Condition 16 dan/atau Condition 2 Polisi tersebut. B
- (f) Sama ada Defendan Kedua mempunyai sebarang liability dibawah Polisi tersebut untuk membayar tuntutan Plaintiff dan/atau Defendan Pertama memandangkan Plaintiff dan/atau Defendan Pertama telah memungkir Condition 11b, Condition 17 dan/atau Condition 2 Polisi tersebut. C
- (g) Sama ada Si mati memiliki lesen memandu dan/atau menunggang yang sah untuk menunggang sebaran motosikal pada masa yang material.
- (h) Sama ada Si mati telah melakkan suatu kesalahan disisi undang-undang (“committed an unlawful act”) dan/atau dibawah Seksyen 26 Akta Pengangkutan Jalan 1987 apabila Si mati menunggang motosikal tanpa lesen pada 7.9.2016. D
- (i) Sekiranya ya, sama ada Defendan Kedua telah secara sah menolak tuntutan Plaintiff dan/atau Defendan Pertama oleh kerana Defendan Kedua tiada sebarang liability dibawah Polisi tersebut untuk membayar tuntutan Plaintiff dan/atau Defendan Pertama memandangkan tuntutan Plaintiff dan/atau Defendan Pertama dikecualikan berdasarkan peruntukkan “Exclusion 1” Polisi tersebut. E
- (j) Sama ada Seksyen 7(3B) Civil Law (Amendment) Act 2019” adalah terpakai dimana tuntutan Plaintiff terhadap Defendan Kedua adalah berdasarkan kemungkiran dan/atau pelanggaran kontrak (jika dibuktikan) dan bukannya suatu tuntutan tort. F
- (k) Sama ada Plaintiff mempunyai kausa tindakan yang sah untuk membuat tuntutan dibawah s. 7(3B) Civil Law (Amendment) Act 2019 terhadap Defendan Kedua memandangkan peruntukan tersebut hanya terpakai untuk tuntutan tort serta yang terakru pada atau selepas 1.9.2019 sahaja. G

The Learned Magistrates’ Grounds Of Judgment

[14] The learned Magistrate’s judgment focused on three key issues.

[15] On privity of contract, the learned Magistrate found in favour of the appellant, holding that the deceased/appellant had privity of contract with the respondent. The court relied on the policy schedule which listed the deceased as an “insured person” and cl. 11 of the policy which referred to rights of the “insured/insured person”. The learned Magistrate held: “mahkamah ini membuat dapatan bahawa si mati/plaintif mempunyai priviti kontrak di bawah polisi tersebut dengan defendan kedua yang mengeluarkan polisi tersebut dan mempunyai kausa tindakan yang sah untuk membawa tindakan undang-undang terhadap defendan kedua.” H
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A [16] On limitation, the learned Magistrate held that the cause of action arose on the date of death (7 September 2016), not the date of repudiation (26 July 2017). Following the cases of *Mohd Sultan Dastagir Syed Ibrahim & Anor v. AXA Affin General Insurance Bhd* [2020] CLJU 565; [2020] 1 LNS 565 and *Su Hock Guan v. AXA Affin General Insurance Malaysia Bhd* [2020] CLJU 1584; [2020] 1 LNS 1584, the learned Magistrate concluded:
B “mahkamah ini membuat dapatan bahawa kausa tindakan adalah berlaku pada hari kemalangan/kematian berlaku, iaitu pada 7.9.2016, dan bukan pada masa tuntutan insurans plaintif yang dihantar melalui “personal accident claim form” ditolak oleh defendan pada 26 Julai 2017.” Therefore,
C the suit filed on 29 September 2022 was time-barred.

[17] On breach of policy terms, the learned Magistrate found that the deceased did not have a valid license when riding the motorcycle, which constituted an unlawful act under the Road Transport Act 1987. Referring to Exclusion 1 of the policy, the learned Magistrate held: “mahkamah
D mendapati bahawa plaintif telah gagal untuk membuktikan bahawa si mati mempunyai lesen memandu yang sah semasa kejadian berlaku. Oleh itu, menurut klausa pengecualian/exclusions 1 di dalam polisi tersebut, defendan kedua tidak melindungi kematian yang disebabkan oleh perbuatan yang menyalahi undang-undang, *ie*, memandu tanpa lesen dan ianya
E dikategorikan sebagai “committing an unlawful act”.”

[18] The learned Magistrate concluded that the preliminary determination of these issues was sufficient to dispose of the entire case, stating: “mahkamah memutuskan di atas imbangan kebarangkalian bahawa jawapan kepada isu-isu penting telah memihak kepada defendan kedua. Oleh itu,
F tuntutan plaintif terhadap defendan kedua adalah ditolak dan perbicaraan penuh bagi tuntutan plaintif adalah tidak lagi perlu diteruskan selaras dengan peruntukan sedia ada dibawah A. 33 k. 2 KKM 2012.”

Appellant And Respondent’s Submissions

G [19] The appellant submitted that the learned Magistrate fell into error in failing to appreciate that as the father who enrolled the deceased for the course offered by the first defendant, he stood in a contractual relationship with the first defendant who, in turn, stood in a contractual relationship with the respondent. The appellant argued that the policy was a “claims made”
H policy, meaning the cause of action only arose when the claim was repudiated on 26 July 2017, not on the date of death. Therefore, the suit filed on 29 September 2022 was within the limitation period. On the exclusion clause, the appellant contended that the deceased’s death was not directly or indirectly caused by, arising from or connected with the commission of an unlawful act – while riding without a license was unlawful, it did not cause
I the death. The appellant also argued that any ambiguity in the exclusion clause should be interpreted in his favour under the *contra proferentem* rule.

[20] The respondent submitted that the deceased and appellant had no privity of contract under the policy, which was between the first defendant and respondent only. They argued that for insurance contracts, the cause of action accrues from the date of loss/death (7 September 2016), not the date of repudiation, making the suit filed on 29 September 2022 time-barred. The respondent contended that since this was a contractual and not tortious claim, the cause of accident was irrelevant – the only issue was whether policy terms were breached. They argued that riding without a license constituted an “unlawful act” under the policy exclusion, regardless of whether it caused the death. The respondent also submitted that the appellant had breached policy conditions requiring notice within 14 days and reference to arbitration within 12 months of repudiation.

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Analysis And Findings Of The Court

Compliance Of Order 33 Rule 2 Of The ROC

[21] Upon a close examination of the learned Magistrate’s grounds of judgment in the present appeal, there are indications that the learned Magistrate may not have strictly adhered to the two-stage process under O. 33 r. 2 of the ROC when allowing the respondent’s application to determine certain questions as preliminary issues.

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[22] Order 33 r. 2 reads:

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2. Time of trial of questions or issues (O. 33 r. 2)

The Court may order any question or issue arising in a cause or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.

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[23] The judgment in *AIA Berhad v. Dr Tan Siew Hui* [2020] CLJU 258; [2020] 1 LNS 258; [2020] MLJU 351 clearly elucidates this two-stage process: first, the court must make an order for the question or issue to be tried as a preliminary issue and give directions for the hearing; and second, only after such directions does the court proceed to hear arguments and decide on the preliminary issue proper. The High Court in *AIA Berhad* found that a failure to follow this process, by bypassing the first stage and proceeding directly to a determination of the preliminary issue, constitutes a procedural irregularity that deprives the parties of the opportunity to properly argue the issue. Such an irregularity warrants setting aside the order made.

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[24] In the present case, the learned Magistrate’s grounds do not expressly indicate that this two-stage process was followed. The grounds suggest that the learned Magistrate, upon hearing the respondent’s O. 33 r. 2 of the ROC application, directly proceeded to determine the preliminary issues and dismiss the appellant’s claim, without first making an order for preliminary determination and giving directions for the hearing.

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- A [25] However, I am of the view that it would not be appropriate for this appellate court to make a definitive ruling on whether there was a procedural non-compliance with O. 33 r. 2, for several reasons.
- B [26] Firstly, and most significantly, any specific procedural objection does not appear to have been raised by the appellant in the submissions before this court as a ground of appeal. The appellant bears the onus to identify and substantiate the grounds on which the learned Magistrate's decision is being challenged. In the absence of such a ground being explicitly advanced, it would not be appropriate for this court to rule on it.
- C [27] Secondly, the full procedural history of the matter before the learned Magistrate is not available in the record of appeal before this court. The grounds of judgment do not exhaustively detail all the steps and orders made in the proceedings below. It is conceivable that the learned Magistrate did make an initial order for preliminary determination and gave directions at an earlier stage, and the present grounds pertain only to the subsequent
- D substantive decision on those issues. Without a complete record, this court is not in a position to conclusively assess compliance with O. 33 r. 2 of the ROC.
- E [28] Thirdly, and flowing from the previous point, the memorandum of appeal setting out the appellant's specific grounds of appeal against the learned Magistrate's decision is also not included in the record of appeal. This document would be crucial in ascertaining whether the appellant had indeed raised the issue of procedural non-compliance as a ground of appeal. In its absence, this court cannot assume that such a ground was advanced.
- F [29] Lastly, it must be acknowledged that the learned Magistrate's grounds of judgment, while suggesting a potential procedural irregularity, are not entirely clear or conclusive on this point. A more explicit discussion of the two-stage process and whether it was adhered to would have been helpful. In the face of such ambiguity, it would not be appropriate to impute error where it has not been clearly demonstrated.
- G [30] Therefore, while I have reservations about whether the proper procedure under O. 33 r. 2 of the ROC was followed by the learned Magistrate based on a reading of the grounds of judgment, I make no conclusive finding on this issue, given that it was not specifically raised as
- H a ground of appeal, the full procedural record is not before this court, and the learned Magistrate's grounds are not entirely clear on this point. This court's decision on this appeal will be based on the grounds that have been properly raised and argued by the parties, as apparent from the available records. The issue of compliance with O. 33 r. 2, while noteworthy, does
- I not form a basis for the present decision.

Time-bar Under Section 6 Of The Limitation Act 1953 – Date Cause Of Action Accrued

[31] The central issue in this appeal is whether the appellant's claim against the respondent is time-barred under s. 6 of the Limitation Act. Section 6 reads:

(1) Save as hereinafter provided the following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say:

(a) actions founded on a contract or on tort;

(b) actions to enforce a recognisance;

(c) actions to enforce an award;

(d) actions to recover any sum recoverable by virtue of any written law other than a penalty or forfeiture or of a sum by way of penalty or forfeiture.

[32] The appellant submits that the learned Magistrate erred in finding that time began to run from the date of the deceased's accident and death on 7 September 2016, contending instead that time only began to run from 26 July 2017, the date the respondent repudiated the claim. The appellant argues that the insurance policy in question is a 'claims-made' policy, and therefore the cause of action only accrued upon the respondent's repudiation of the claim.

[33] The relevant question set out for the learned Magistrate's determination in the O. 33 r. 2 application in para. 1(c) is (translated):

If the Plaintiff and/or the deceased have any rights under the contract and/or cause of action against the Second Defendant, whether the Plaintiff's claim against the Second Defendant has been limited by the 6-year time limit from the date of accrual of the cause of action and/or barred by s. 6 of the Limitation Act 1953?

[34] The respondent argues that it is settled law that in an insurance claim, time begins to run from the date of the loss or incident, and not the date of repudiation by the insurer. The respondent relies on several authorities in support of this proposition, chiefly the Federal Court decision in *ALW Car Workshop Sdn Bhd v. AXA Affin General Insurance Bhd* [2019] 7 CLJ 667; [2019] 4 MLJ 561, where it was held that the relevant date for ascertainment of the amount of loss in an insurance claim is the date of the loss. The respondent also cites the High Court decisions in *Su Hock Guan v. AXA Affin General Insurance Malaysia Bhd* (*supra*) and *Shiva Kumar Day v. Allianz Life Insurance Malaysia Bhd & Anor* [2021] CLJU 684; [2021] 1 LNS 684; [2021] MLJU 823, both of which were affirmed by the Court of Appeal, for the principle that the cause of action in an indemnity insurance policy accrues from the date of the loss event and not the date of repudiation by the insurer.

- A [35] Having carefully considered the submissions of both parties and the authorities cited, I am of the view that the respondent's position is correct. The policy under consideration here is an indemnity insurance policy, not a claims-made policy as contended by the appellant. This is evident from the policy wording itself, which states in the third paragraph:
- B Company shall agree to accept the premium the insured Person shall sustain any bodily Injury caused by Accidental Violent External And Visible Means Which Shall Solely And Independently Of Any Other Cause result in his/her death or disablement the Company will pay the sum or sums of money stated In the Schedule and in accordance to the Table of Benefits provided in this policy.
- C [36] This clause makes it clear that the respondent's obligation to pay is triggered by the occurrence of the insured event, *ie*, the death or disablement of the insured person resulting from accidental injury. The benefit becomes payable upon the happening of this event, subject to the terms and conditions of the policy. This is further reinforced by the table of benefits in the policy,
- D which lists the various events upon which the claim becomes payable.
- E [37] In contrast, in a claims-made policy, coverage is triggered when a claim is made against the insured during the policy period, regardless of when the event giving rise to the claim occurred. The policy here does not have such a triggering clause. The mere fact that a claim has to be made to the insurer does not convert this policy into a claims-made one.
- F [38] The appellant's reliance on the date of repudiation as the starting point for limitation is, with respect, misconceived. As rightly pointed out by the respondent, if this were the case, it could lead to a situation where a claimant could sit on their claim for many years after the insured event before making a claim, thereby rendering the limitation period meaningless. This surely cannot be the intent of the Limitation Act.
- G [39] The Federal Court in *ALW Car Workshop* made it abundantly clear that in indemnity policies, time begins to run from the date of the loss or accident. The Federal Court stated:
- [37] It is trite law that the relevant date for ascertainment of the amount of loss or claim in a fire insurance claim is the date of the loss. In insurance law, a fire policy is an indemnity policy ...
- H [40] This principle was re-affirmed in *Su Hock Guan* and *Shiva Kumar Day*, decisions affirmed by the Court of Appeal, where the courts took great pains to review the relevant authorities and literature before arriving at the conclusion that the cause of action accrues from the date of the loss event, unless the contract provides otherwise.
- I [41] In *Su Hock Guan*, Ong Chee Kwan JC (as he then was) held:
- [24] Having considered the aforesaid authorities and after reading the article "*When Does an insured's Cause of Action Against an Insurer Arise: At the Time of the Event/Loss or After the Insurer has Disclaimed Liability?*" by

S Kalyana Kumar published in [2016] 3 MLJ cxxxi, the UK Supreme Court decision in *Connect Shipping Inc And Anor v. Sveriges Angfartygs Assurans Forening (The Sweidish Club) And Ors; The Renos* [2019] UKSC 29 and the Supreme Court of New South Wales Court of Appeal decision in *Globe Church Incorporated v. Allianz Australia Insurance Ltd* [2019] NSWCA 27, I share the same view as the learned Judicial Commissioner that the cause of action in an indemnity insurance policy, unless the contract otherwise provides, necessarily accrues from the date of the loss event and not from the date of repudiation of liability by the insurer.

[42] Similarly, in *Shiva Kumar Day v. Allianz Life Insurance Malaysia Bhd*, Liza Chan Sow Keng JC (as she then was) stated:

[43] ... my view that the cause of action in an indemnity insurance policy accrues from the date of the loss event (disability) and not from the date of repudiation of liability by the insurer ...

[43] Applying these principles to the facts at hand, the deceased met with the fatal accident on 7 September 2016. The appellant's cause of action therefore accrued on that date. The appellant only filed the writ of summons on 29 September 2022, more than six years after the cause of action accrued. The claim is therefore clearly time-barred under s. 6 of the Limitation Act.

[44] The appellant's attempt to characterise the policy as a "claims-made" policy is, in my view, an attempt to circumvent the clear time bar. The policy wording and the nature of the insurance as a benefit policy rather than a claims-made policy make it evident that the limitation period starts from the date of the insured event, *ie*, the accident resulting in death. The learned Magistrate correctly applied the legal position established in cases like *Shiva Kumar Day*.

[45] For these reasons, I find that the learned Magistrate did not err in holding that the appellant's claim was time-barred under s. 6 of the Limitation Act. The learned Magistrate was correct in finding that time began to run from 7 September 2016, the date of the deceased's accident and death, and not 26 July 2017, the date the claim was repudiated by the respondent. On this issue, the respondent prevails.

Unlawful Act Under The Insurance Policy Exclusion Clause By Riding A Motorcycle Without A Valid License

[46] The issue before this court is whether the learned Magistrate erred in finding that the deceased had committed an unlawful act under the insurance policy exclusion clause by riding a motorcycle without a valid license, thereby entitling the respondent to validly deny the appellant's claim.

[47] The relevant questions set out for the learned Magistrate's determination in the O. 33 r. 2 application in paras. 1(h) and 1(i) are (translated):

A (h) Whether the deceased has committed an unlawful act under the law (“committed an unlawful act”) and/or under s. 26 of the Road Transport Act 1987 when the deceased rode a motorcycle without a license on 7 September 2016?

B (i) If yes, whether the Second Defendant has lawfully denied the Plaintiff’s and/or First Defendant’s claim because the Second Defendant has no liability under the policy to pay the Plaintiff’s and/or First Defendant’s claim since the Plaintiff’s and/or First Defendant’s claim is excluded under the provision “Exclusion 1” of the policy?

C [48] The appellant contends that the deceased’s death was not directly or indirectly caused, arising from or in connection with the commission of an unlawful act. The appellant submits that the cause of the deceased’s death was not directly or indirectly brought about because he was unlicensed, and that the accident was unrelated to the fact that the deceased did not have a license.

D [49] The respondent argues that the deceased clearly committed an unlawful act by riding without a license, which is an offence under s. 26 of the Road Transport Act 1987. Section 26(1) provides:

E Except as otherwise provided in this Act, no person shall drive a motor vehicle of any class or description on a road unless he is the holder of a driving licence authorising him to drive a motor vehicle of that class or description, and no person shall employ or permit another person to drive a motor vehicle on a road unless the person so employed or permitted to drive is the holder of such a driving licence.

F [50] The respondent therefore submits that the appellant’s claim is expressly excluded by virtue of Exclusion 1 under the policy, and that the respondent has rightfully and correctly rejected the appellant’s claim. Exclusion 1 reads:

This policy does not cover death or disablement directly or indirectly caused by, arising from, or in connection with any of the following:

G 1. Suicide (whether felonious or not) or any attempt thereat or self-injury, pregnancy (except Benefit 12) or childbirth, venereal disease or insanity, the effects or influence (temporary or otherwise) of alcohol or of drugs not prescribed by a medical practitioner, the committing or attempt to commit any unlawful act.

H [51] Having carefully considered the submissions of both parties, I am of the view that the learned Magistrate was correct in finding that the deceased’s act of riding the motorcycle without a valid licence at the time of the accident constituted an “unlawful act” within the meaning of Exclusion 1 of the policy, thereby entitling the respondent to deny the appellant’s claim.

I [52] The key phrase in Exclusion 1 that supports the respondent’s position is “in connection with”. This phrase is broad and expansive. It does not necessitate a direct or proximate causal relationship, but rather denotes a

more general nexus or link. Something can be said to be “in connection with” another thing if it is related to it, associated with it, or linked to it in some way.

[53] The use of this phrase in Exclusion 1 suggests that the policy intends to exclude from coverage not just deaths directly caused by unlawful acts, but also deaths that are connected to or associated with unlawful acts in a broader sense. If the policy had intended to require a direct causal link, it could have limited it to phrases like “caused by” or “resulting from”. The choice of the words “in connection with” indicates an intention to cast a wider net of exclusion.

[54] In the present case, it is undisputed that riding a motorcycle without a valid licence is an unlawful act under the Road Transport Act 1987. At the time of the accident, the deceased was in the process of committing this unlawful act. The death occurred while the unlawful act was ongoing. In this sense, the death was connected to the unlawful act – it happened in the context of, and was associated with, the illegal riding. The unlawful riding and the death were not unrelated events; they were linked by temporal and circumstantial coincidence.

[55] The appellant’s argument that the death was not directly or indirectly caused by the unlicensed riding, while having some logical force, does not align with the broader language of the exclusion clause. The clause does not require the unlawful act to be the cause of the death; it suffices that the death is connected to the unlawful act. This connection is clearly present here.

[56] Moreover, the structure of Exclusion 1, with the phrase “in connection with” applying to all the listed scenarios, including “the committing or attempt to commit any unlawful act”, reinforces this broad interpretation. If a direct causal link was intended, the policy could have been worded differently.

[57] The appellant’s proposed interpretation would significantly narrow the scope of the exclusion clause, contrary to its plain language. It would limit the exclusion to situations where the unlawful act directly causes the death, even though the words “in connection with” were deliberately used. Such an interpretation would not give full effect to the language chosen by the parties in the policy.

[58] In interpreting an exclusion clause, the *contra proferentem* rule – which states that any ambiguity should be resolved against the insurer – does come into play. However, in the present case, I do not find any ambiguity in the meaning of “in connection with”. The phrase has a clear and established broad meaning, which encompasses the situation at hand. There is no ambiguity to be resolved in favour of the appellant.

[59] Therefore, I find that the learned Magistrate did not err in holding that the deceased had committed an unlawful act under the insurance policy exclusion clause by riding a motorcycle without a valid license. The learned

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- A Magistrate correctly interpreted the broad language of the exclusion clause, particularly the phrase “in connection with”, to find that the deceased’s death was connected to his unlawful act of unlicensed riding, even if it was not directly caused by it. The learned Magistrate’s interpretation gives effect to the plain and expansive wording of the clause.
- B [60] Consequently, the respondent was entitled to deny the appellant’s claim under the policy. The exclusion clause, properly construed, applies to the present facts. I therefore dismiss the appellant’s appeal on this issue and affirm the decision of the learned Magistrate.
- C *Applicability Of Section 7(3B) Of The Civil Law (Amendment) Act 2019*
- D [61] Another issue before this court is whether the learned Magistrate erred in not addressing and/or finding that s. 7(3B) of the Civil Law (Amendment) Act 2019 relied upon by the appellant for his bereavement claim was inapplicable, given that the appellant’s claim was based on an alleged breach of contract and not tort.
- E [62] The relevant questions set out for the Magistrates’ Court’s determination in the O. 33 r. 2 application in paras. 1(j) and (k) are (translated):
- (j) Whether “s. 7(3B) Civil Law (Amendment) Act 2019” is applicable where the Plaintiff’s claim against the Second Defendant is based on breach and/or violation of contract (if proven) and not a tort claim?
- (k) Whether the Plaintiff has a valid cause of action to make a claim under “s. 7(3B) Civil Law (Amendment) Act 2019” against the Second Defendant given that the provision is only applicable to tort claims accruing on or after 1 September 2019?
- F [63] The appellant contends that although the claim is based on an alleged breach of contract, s. 7(3B) of the Civil Law (Amendment) Act 2019 should still apply.
- G [64] The respondent argues that s. 7(3B) relied upon by the appellant is not at all applicable as the appellant’s claim is a contractual claim and not based on tort. The respondent further submits that s. 7(3B) is only applicable to claims under tort where the cause of action accrued on or after 1 September 2019.
- H [65] Having carefully considered the arguments advanced by both parties, I find that the learned Magistrate did not err in not addressing the applicability of s. 7(3B). The respondent’s position is plainly correct in law.
- I [66] A plain reading of s. 7(3B) makes it abundantly clear that it applies only to claims in tort. The provision reads:
- (3B) Notwithstanding paragraph (3)(b), where a person has died, in assessing the damages under paragraph (3)(a), the Court shall take into account any claim for bereavement made under paragraph (3A).

[67] Section 7(3B) refers to the assessment of damages under para. (3)(A), which in turn deals with claims for damages for personal injury arising out of a tort. Section 7(3A) reads:

(3A) Any action under this section may consist of or include a claim for damages for bereavement and, subject to subsection (3D), the sum to be awarded as damages under this subsection shall be thirty thousand ringgit.

[68] The entire scheme of s. 7 is focused on tortious claims. There is nothing in the language of s. 7(3B), or indeed in any part of s. 7, to suggest that it is intended to apply to contractual claims.

[69] Moreover, as rightly pointed out by the respondent, s. 7(3B) only applies to claims in tort where the cause of action accrued on or after 1 September 2019. This is clear from the commencement clause of the Civil Law (Amendment) Act 2019, which states:

Akta Undang-undang Sivil (Pindaan) 2019 Penetapan Tarikh Permulaan Kuatkuasa

Pada menjalankan kuasa yang diberikan oleh subseksyen 1(2) Akta Undang-Undang Sivil (Pindaan) 2019 [Akta A1591], Menteri menetapkan 1 September 2019 sebagai tarikh Akta itu mula berkuat kuasa.

[70] In the present case, the appellant's claim is indisputably based on an alleged breach of the insurance contract by the respondent. This is evident from para. 16 of the amended statement of claim, where the appellant pleads breach of contract on the part of the respondent. It is also acknowledged by the appellant in para. 3 of the reply that the claim against the respondent is based on an alleged cause of action in contract and not in tort.

[71] Given that the appellant's claim is premised on contract and not tort, s. 7(3B) has no application. The fact that the claim arose from the death of the deceased does not change the fundamental nature of the claim as a contractual one. The appellant cannot seek to invoke a statutory provision that is specifically designed for tortious claims.

[72] The appellant's submission that s. 7(3B) should nevertheless apply despite the claim being in contract is, with respect, misconceived. The appellant has not cited any authority to support this proposition. The clear wording of s. 7(3B) and the scheme of s. 7 as a whole militate against such an interpretation.

[73] In the circumstances, I find that the learned Magistrate did not err in not addressing the applicability of s. 7(3B). There was no necessity for the learned Magistrate to do so, as s. 7(3B) is clearly inapplicable to the appellant's claim which is based on contract. I therefore dismiss the appellant's appeal on this issue. The learned Magistrate's decision is affirmed.

A *Breach Of Condition 11b, Condition 16 And Condition 2 Of The Policy*

[74] Other questions set out for the learned Magistrate Court's determination in the O. 33 r. 2 application in para. 1(e) and 1(f) are (translated):

B (e) Have the Plaintiff and/or First Defendant breached "Condition 11b", "Condition 16", and/or "Condition 2" of the policy?

(f) Does the Second Defendant have any liability under the policy to pay the claims of the Plaintiff and/or First Defendant given that the Plaintiff and/or First Defendant have breached "Condition 11b", "Condition 16", and/or "Condition 2" of the policy?"

C [75] Upon examining the respondent's submissions and the learned Magistrate's grounds of judgment, it is apparent that the respondent, in para. 27 of its written submissions, has raised the issue of whether the appellant's claim is barred due to breaches by the appellant and/or the association of certain conditions in the insurance policy, namely:

- D (i) condition 11b - failure to give notice of the claim within 14 days from the date of the accident;
- (ii) condition 16 - failure to refer the matter to arbitration within 12 months from the date of the respondent's repudiation of the claim, resulting in the claim being deemed abandoned; and
- E (iii) condition 2 - breach of the condition precedent clause requiring compliance with all policy terms and conditions, by violating conditions like 11b and 16.

F [76] However, upon a careful scrutiny of the learned Magistrate's grounds of judgment, it does not appear that the learned Magistrate directly addressed or made a ruling on this specific issue as posed by the respondent.

G [77] While the grounds do make passing references to some of these policy conditions, there is no clear analysis or finding on whether these conditions were in fact breached by the appellant and/or the association, and if so, whether such breaches operate to bar the appellant's claim. The learned Magistrate's decision seems to be based primarily on other grounds, such as the appellant's lack of *locus standi*, the claim being time-barred under the Limitation Act, and the deceased's act of riding without a license excluding coverage under the policy.

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I [78] In the absence of an express ruling on this issue in the grounds of judgment, this court is inclined to infer that the learned Magistrate had impliedly rejected the respondent's contention on this point. It is a well-established principle that a judge is not required to deal with every argument put forth by parties, and a failure to explicitly address an argument may be taken as an implicit rejection thereof, unless shown otherwise.

[79] It is also pertinent to note that the appellant, in the present appeal, is not raising the learned Magistrate's failure to rule on this issue as a ground of appeal. The appellant bears the onus of identifying the specific grounds on which the learned Magistrate's decision is being challenged. By not taking issue with the learned Magistrate's silence on this point, the appellant appears to have accepted it.

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[80] In these circumstances, this court does not find it necessary or appropriate to delve into the merits of the respondent's arguments on the breach of policy conditions. The respondent had the opportunity to canvass this issue before the learned Magistrate, and the learned Magistrate's lack of an express finding on it must be taken as a rejection of the respondent's position, in the absence of any objection from the appellant.

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[81] This court's role in the present appeal is to assess the correctness of the learned Magistrate's decision based on the grounds properly advanced by the appellant. As the appellant has not raised the learned Magistrate's treatment of the policy conditions issue as a ground of appeal, this court will not unilaterally embark on a consideration of the same. The focus will remain on the grounds that have been explicitly put forth by the appellant.

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[82] Therefore, while acknowledging the respondent's arguments on conditions 11b, 16 and 2 as set out in para. 27 of its written submissions, this court will not make a ruling on this issue, in view of the learned Magistrate's implied rejection of the same and the appellant's choice not to challenge that rejection in the present appeal.

E

Conclusion

[83] Having carefully considered all the grounds of appeal, I find that while the learned Magistrate correctly found that the appellant had privity of contract with the respondent, her decision to dismiss the appellant's claim was justified on two key grounds. First, the claim was clearly time-barred under s. 6 of the Limitation Act, as the cause of action accrued on the date of the deceased's death (7 September 2016) and not the date of repudiation (26 July 2017), making the suit filed on 29 September 2022 outside the six-year limitation period. Second, coverage was validly excluded under exclusion 1 of the policy, as the deceased's death occurred "in connection with" the unlawful act of riding without a valid license, regardless of whether the unlicensed riding directly caused the death. The appellant's reliance on s. 7(3B) of the Civil Law (Amendment) Act 2019 was also misplaced as that provision applies only to tortious claims, not contractual claims like the present one. For these reasons, I dismiss this appeal with costs of RM2,000 to the respondent. The learned Magistrate's decision is affirmed.

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